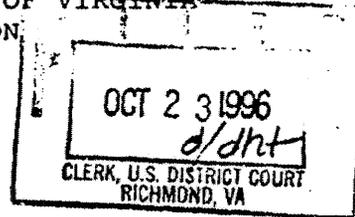


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION



UNITED STATES OF AMERICA,

Plaintiff,

v.

96 CR 64

RICHARD ELLIOTT HUMPHREYS,

Defendant.

Before: HONORABLE ROBERT R. MERHIGE, JR.,
United States District Judge

ORIGINAL

July 15, 1996
Richmond, Virginia

ARRAIGNMENT

GILBERT FRANK HALASZ, RMR
Official Court Reporter
U. S. Courthouse
Richmond, VA 23219
(804) 730-9626

1 THE CLERK: Criminal action number 3: 96 CR 64 - 01
2 United States versus Richard Elliott Humphreys.
3 Miss Hannah Lauck represents United States.
4 Mr. Matthew N. Ott represents the defendant.
5 Are counsel ready to proceed?
6 MS. LAUCK: We are.
7 MR. OTT: We are.
8 MS. LAUCK: United States is ready.
9 THE COURT: Good morning.
10 MR. OTT: Good morning, Your Honor.
11 MS. LAUCK: We are here today for the arraignment and
12 re arraignment on a plea of an indictment against Richard
13 Elliott Humphreys. Mr. Humphreys faces an indictment with
14 eight counts charging him with four counts of false
15 statements in violation of 18 U.S.C. 1001, and four counts
16 of obstruction of agency proceedings, in violation of 18
17 1505. Both charges carry a maximum possible penalty of five
18 years confinement and 250 thousand dollars per count.
19 The United States and defendant have filed with The
20 Court a signed plea agreement and statement of facts under
21 which the defendant has agreed to plead guilty to count one
22 charging him with false statements in violation of 18 U.S.C.
23 1001.
24 In exchange for the defendant's agreement to plead to
25 count one, the United States agrees not to further

1 criminally prosecute the defendant for any conduct charged
2 in the indictment, excluding any crimes of violence unknown
3 to the United States. The United States agrees that it will
4 not oppose exclusion of the United States sentencing
5 guideline 2 F 1.1 B 4 if the probation department determines
6 that it does not apply in this case. And the United States
7 agrees that it will move to dismiss the remaining counts of
8 indictment at sentencing.

9 THE COURT: You have agreed that you would not oppose
10 the exclusion of it if the probation officer says it does
11 not apply?

12 MS. LAUCK: That's correct. A double negative.

13 THE COURT: Well, if it doesn't apply, what are you
14 giving?

15 MS. LAUCK: Your Honor, we are giving up our right to
16 seek its application as an objection during the sentencing
17 process.

18 THE COURT: I see.

19 But you have decided the issue, if they exclude it,
20 it is because it doesn't apply in that --

21 MS. LAUCK: What we have done is left the
22 determination to the probation office, which it always has,
23 and agreed not to present any challenge if they decide to
24 exclude it.

25 THE COURT: Very good. Thank you.

1 Stand up, please, Mr. Humphreys.

2 You are Richard Elliott Humphreys; is that correct,
3 sir?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Mr. Humphreys, you were charged in -- let
6 me see -- I am sorry. I am going slow because this is a
7 little different than I have ever seen.

8 Introductory allegations. You better hope The Court
9 doesn't accept what the government says are the introductory
10 allegations. I guess it is part of count one.

11 (Court read count 1 of indictment to the defendant)

12 Now, do you understand the nature of the charge and
13 the conceivable penalty if you are found guilty?

14 THE DEFENDANT: Yes.

15 THE COURT: Now, whether you are guilty or not, you
16 have a Constitutional right to maintain a plea of not
17 guilty. Which means whether you are guilty or not, it
18 doesn't make any difference, you have a right to plead not
19 guilty and put the government to its proof. You have a
20 right to trial by jury. You have a right to see and hear
21 the witnesses against you. You have the right to use the
22 power of the court to insist on witnesses in your favor, if
23 any you have, to report to court. You, of course, have a
24 right to have the assistance of Mr. Ott during all stages of
25 the proceedings whether you plead guilty or not guilty. And

1 you have the right to remain silent. That is, no one could
2 make you testify under a not guilty plea.

3 Now, if you plead guilty you are waiving many of the
4 rights that I have just enumerated. You are waiving your
5 right to -- mainly waiving your right to remain silent. I
6 will ask you questions, and you must respond to them in a
7 truthful manner or you stand subject to another charge.

8 You also waive the right to a trial by jury, as well
9 as the right to see and hear the witnesses, because I will
10 simply accept a statement from the U S Attorney and you
11 won't get a chance to cross-examine anyone.

12 Do you understand that, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you been over the matter in detail
15 with your counsel?

16 THE DEFENDANT: Yes, I have.

17 THE COURT: Do you have any questions about this
18 charge?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: And you have entered into a plea
21 agreement with the government that you will enter a plea of
22 guilty to count one that I have just read and hopefully
23 explained to you?

24 THE DEFENDANT: That's correct.

25 THE COURT: Arraign the defendant

1 THE COURT: Did you put out these, whatever these
2 tanks, I guess it is cylinders, knowing that they were
3 adulterated?

4 MR. OTT: If Your Honor please --

5 THE COURT: I want the truth.

6 THE DEFENDANT: Yes, sir.

7 MR. OTT: Adulterated is a legal phrase that --

8 THE COURT: Well, they were bad. Is that what you
9 did?

10 THE DEFENDANT: The normal paper work for registering
11 them was not done, that's correct.

12 THE COURT: How about the cylinders themselves? Was
13 anything wrong with them?

14 THE DEFENDANT: They were tested with the oxygen
15 analyzer, and none of them were found to be bad. But we did
16 not, I did not have the proper paper work showing those
17 results.

18 THE COURT: Then why were they recalled? Because of
19 the lack of paper work?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: So I take it that no one was injured by
22 them, or was in danger of being injured.

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: All right. Anybody make any promises to
25 you other than what is contained in this plea agreement?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Anybody threaten you in any way to induce
3 you to plead guilty?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: All right. I apologize to your counsel
6 for asking this question. No one was dumb enough to tell
7 you how much time you would get under the guidelines, were
8 they? Because if they did, and that is why you are pleading
9 guilty, don't do it, because that is just guess work.
10 Nobody knows. All we can guarantee is you won't get more
11 than five years.

12 THE DEFENDANT: I wasn't assured anything special.

13 THE COURT: All right. I will accept the plea.

14 THE DEFENDANT: You may be seated, sir.

15 Is this here because of lack of paper work?

16 MS. LAUCK: Your Honor, the lack of paper work is
17 actually the heart of the issue of the case, because
18 although Mr. Humphreys believes strongly no one was injured
19 as a result of the tanks going out in the way that they did,
20 the fact that the paper work exists, does not exist, means
21 that there is no way to know one way or the other whether or
22 not anybody was hurt. And under the FDA guidelines they
23 were adulterated, including the way that the purity testing
24 was conducted. There is no way to know or to track whether
25 or not there was any injury resulting from these tanks,

1 which is really the issue that was considered serious by the
2 United States.

3 THE COURT: Well, it is serious,

4 MS. LAUCK: So, Your Honor, the United States does
5 not have any evidence of specific individuals who were hurt.
6 That is true. All of the individuals who were receiving
7 these oxygen tanks were on home oxygen. So they were
8 individuals who were sick enough to require oxygen. The
9 United States has filed a statement of facts with The Court
10 that has been signed by both parties which outlines nearly
11 verbatim what you just read to Mr. Humphreys as count one of
12 the indictment; and all parties have stipulated to that,
13 Your Honor.

14 THE COURT: Do you wish to -- that is the case?

15 MS. LAUCK: Your Honor, it is. If the United States
16 went to trial, the United States asserts what is in the
17 statement of facts, that it would prove at trial.

18 THE COURT: Mr. Ott, do you wish to put on any
19 substantive evidence?

20 MR. OTT: No, I don't, Your Honor.

21 THE COURT: All right. Let me read this. I haven't.

22 All right. If you don't have any evidence to put on,
23 Mr. Ott, Mr. Humphreys, you may stand up, please.

24 On your plea of guilty and the summarization as
25 contained in the statement of facts by the Assistant United

1 States Attorney, The Court finds you guilty as charged in
2 count one.

3 We will get a presentence report.

4 My docket book, please.

5 I wondered how near it is? I consider this a very
6 serious matter. The most serious being that I want to know
7 from the probation officer what action, if any, was taken
8 from the time the FDA contacted the defendant, which was
9 sometime in February, I believe, until June of 1994. And I
10 want to know the explanation, if any, why he allegedly told
11 an untruth. This is very dangerous stuff. I suspect it
12 could kill somebody if it is really adulterated.

13 What's the date?

14 THE CLERK: September 23rd, Judge. No, I apologize.
15 October 1st.

16 THE COURT: October 4th, is that agreeable with
17 counsel?

18 MR. OTT: Yes, sir.

19 MS. LAUCK: I think I have a sentencing at 9:00.
20 That shouldn't go beyond 9:30.

21 THE COURT: How about 8:30?

22 MS. LAUCK: 8:30 is fine, also, Your Honor.

23 THE COURT: All right. I just don't like the court
24 reporter to have to come just for a sentencing. We have a
25 case that day. If that is agreeable, I will make it 8:30.

1 8:30 October 4th for sentencing. We will continue the
2 defendant on his present bond for his appearance here
3 October 4th at 8:30.

4 Your failure to appear at that time, or any other
5 time that The Court directs, can result in confinement in
6 the penitentiary.

7 Do you understand that, sir?

8 THE DEFENDANT: Yes.

9 MS. LAUCK: Your Honor, just for the record, this is
10 the defendant's first appearance, and he has not yet been
11 put on bond.

12 THE COURT: Okay. Put him on bond. 50 thousand
13 dollars personal recognizance.

14 THE CLERK: Please raise your right hand.

15 Richard Elliott Humphreys, you acknowledge yourself
16 indebted unto the United States in the just and full sum of
17 50 thousand dollars on the condition you shall be an and
18 appear before This Court on October 4th, 1996 at 8:30 or
19 such other times as The Court may direct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right.

22 If you haven't been processed, Mr. Ott, see that your
23 client goes to the Marshal's office for processing.

24 MR. OTT: Yes, Your Honor.

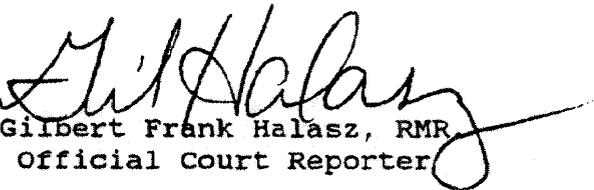
25 THE COURT: From there, to the probation office.

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MR. OTT: Yes, sir.

THE COURT: Thank you.

THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT.


Gilbert Frank Halasz, RMR
Official Court Reporter

CRIMINAL PROCEEDINGS - U.S. DISTRICT COURT, E. DISTRICT OF VA. - RICHMOND DIVISION

JUDGE: ROBERT R. MERHIGE, JR.
 REPORTER: GIL HALASZ

DOCKET NO. CR 3:96CR64-01
 DATE: JULY 15, 1996

UNITED STATES OF AMERICA

COUNSEL

v.

- 1. RICHARD ELLIOTT HUMPHREYS
- 2. _____
- 3. _____
- 4. _____

- 1. MATTHEW N. OTT, ESQUIRE
- 2. _____
- 3. _____
- 4. _____

APPEARANCES: GOVERNMENT M. HANNAH LAUCK, AUSA ✓
 DEFENDANT WITH COUNSEL (✓) DEFENDANT WITHOUT COUNSEL () ✓
 DEFENDANT NOT PRESENT (✓) WAIVER OF APPEARANCE PREVIOUSLY FILED () ✓
 BAIL STATUS: DEFENDANT ON BOND () DEFENDANT INCARCERATED () BOND NOT SET (✓)
 TYPE OF PROCEEDINGS: ARRAIGNMENT () ARRAIGNMENT/GUILTY PLEA (✓) MOTIONS ()
 OTHER: _____ ()
 PRELIMINARY PROCEEDINGS: WAIVER OF INDICTMENT EXECUTED, FILED ()
 CRIMINAL INFORMATION FILED ()
 OTHER: _____ ()

ARRAIGNMENT PROCEEDINGS:

DEFENDANT(S)	WFA	FA	G	NG	JURY	WAIVED	30 DAY WAV.
1. _____							
2. _____							
3. _____							
4. _____							

FILED
 IN OPEN COURT
JUL 15 1996
 CLERK, U.S. DISTRICT COURT
 RICHMOND, VA

GUILTY PLEA PROCEEDINGS: DEFENDANT WITHDREW PLEA OF NG AS TO COUNT(S) _____ ()
 DEFENDANT REARRAIGNED ON COUNT(S) _____ ()
 PLEA BARGAIN AGREEMENT FILED (✓)
 DEFENDANT ENTERED PLEA(S) OF GUILTY AS TO COUNT(S) 1 (✓)
 STATEMENT OF FACTS FILED (✓) USED AS SUMMARY () ✓
 COURT ACCEPTED PLEA (✓) GOVT SUMMARIZED EVIDENCE (✓)
 JUDGMENT: DEFENDANT GUILTY AS CHARGED IN COUNT(S) 1 (✓)
 PRESENTENCE REPORT ORDERED (✓) P.S.I. WAIVED () ✓
 BOND HEARING PROCEEDINGS: DEFENDANT PLACED ON PR BOND IN AMOUNT OF \$ 50K (✓)
 BOND SET AT \$ _____ WITH SURETY ()
 DEFENDANT CONTINUED ON PRESENT BOND () DEFT REMANDED ()
 GOVT'S MOTION FOR BENCH WARRANT TO ISSUE IN AMOUNT OF \$ _____ WITH SURETY HEARD () GRANTED ()
 BENCH WARRANT TO ISSUE () MOTION DENIED () ✓
 OTHER PROCEEDINGS: SENTENCING GUIDELINE ORDER ENTERED (✓)

The Court directed Deft to report as directed by his counsel or Probation Officer

CASE CONTINUED TO: OCTOBER 04, 19 96 AT 8:30 a.m. FOR SENTENCING

CASE SET: 9:00 a.m. BEGAN: 9:00 **30** ENDED: 9:21 TIME IN COURT: 21